although the representations were made after the property had been delivered and during the adjustment of freight charges. The indictment was justified on the ground that underbilling is a form of securing preferences.

COVENANTS.—RESTRICTIONS ON LAND ACQUIRED BY ACCRETION.—Defendant company platted and sold lots, covenanting to keep free from all buildings a certain area bordering on the Atlantic Ocean. This area was enlarged by accretion and the defendant company was about to erect buildings on the added land. Plaintiffs, who were lot owners, sought an injunction to restrain the erection of these buildings. *Held,* that the restriction upon use of land fronting on navigable waters extended over lands afterwards acquired by accretion. *Bridgewater* v. *Ocean City Ass'n.* (N. J. Eq. 1915), 96 Atl. 905.

This particular question appears to be raised here for the first time. However, other questions fundamentally the same have been ruled upon. It has been held that land formed by accretion is subject to an outstanding lease upon the land to which the accretion adheres. See *Cobb* v. *Lavalle,* 89 Ill. 331; *Williams* v. *Baker,* 41 Md. 523. It has also been held that a widow is entitled to her dower in accretions. *Lombard* v. *Kinzie,* 73 Ill. 446. Accretions are held to be subject to an easement upon the land to which the accretion is made. *People* v. *Lambier,* 5 Denio (N. Y.) 9. There is also dictum to the effect that in such cases accretions are subject to liens and mortgages. *Cobb* v. *Lavalle,* 89 Ill. 331. If the statute of limitations has run partially against an owner's right to recover land originally existing, it is held that his right to recover the newly formed land is liable to be barred within the same time. See *Bellefontaine Co.* v. *Niedringhaus,* 181 Ill. 426; and *Benne* v. *Miller,* 149 Mo. 228. See also *Schmidt* v. *Supply Co.* (N. J.), 184 Atl. 807.

CONSTITUTIONAL LAW.—INCOME TAX.—A stockholder of the Union Pacific Railroad Company brought a bill in equity to restrain the directors of that company from paying the income tax levied under the authority of an Act of Congress, October 3rd, 1913, alleging in general that the law was unconstitutional. The statute in question was passed by Congress pursuant to the Sixteenth Amendment, which is as follows: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." It was contended that all income taxes must be precisely of the kind authorized by the technical terms of the Amendment, or else be subject to the rule of apportionment; that in effect the Amendment took a certain type of direct taxes and prevented the requirement for apportionment from operating upon them; that when the Amendment authorized a tax upon incomes "from whatever source derived," a classification of incomes is not permitted and an income law which excludes some persons or property does not fall within its terms and therefore such a law remains in the class of direct taxes. It was *held* that the con-

tentions were without foundation. *Brushaber* v. *Union Pacific Railroad Company,* 36 Sup. Ct. 237.

The principal case is the first one decided under the provisions of the Sixteenth Amendment, and is therefore peculiarly important. It cannot intelligently be read without a consideration of the case of *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U. S. 129, 39 L. Ed. 759, 15 Sup. Ct. 673; 158 U. S. 601, 39 L. Ed. 1108, 15 Sup. Ct. 912, where it was held that an income tax should be tested by its results, and as the tax finally falls upon the property from which the income was derived, the tax must, in effect, be a tax upon the property itself; insofar as the tax fell upon either real or personal property it was deemed to be direct within the meaning of the Constitution. It thus appears that an income tax was looked upon as direct because the court looked not to the immediate point at which the tax was levied, but to the source upon which it ultimately fell, and falling in the end on real and personal property, it was direct. In the present case the court suggested that, although from the time of the decision in *Hylton* v. *United States,* 3 Dall. 171, 1 L. Ed. 556, direct taxes were deemed to be only those upon real estate and capitation taxes, yet the result reached in the *Pollock* case that a tax on personal estate was also a direct tax, is not attempted to be disturbed by the Amendment. The Amendment goes rather to the rule laid down in that case which requires the court, in determining whether or not a tax is direct, to look to the source from which the income arises rather than merely stopping with the income itself. The Amendment orders the court to look no further than the income itself and to disregard the source from which the income is derived. Income taxes are not by the Amendment taken from the class of direct taxes, but the Amendment prevents the operation of a rule which had removed that type of taxation from the class of excise taxes to that of direct taxes, viz., the rule of looking to the ultimate source.

CONSTITUTIONAL LAW.—POWER OF COMMISSIONER TO PUNISH A WITNESS.—X was appointed commissioner by a New York court to take the testimony of A and B in Ohio for a cause pending in New York. A and B refused to be sworn as witnesses, and X, finding their testimony necessary, ordered them imprisoned for contempt. A and B applied for a writ of habeas corpus, claiming that the Ohio statute authorizing such commitment by a commissioner of a sister state was unconstitutional because it allowed the exercise of judicial power by one not a member of the judicial department of the State of Ohio. *Held,* that the statute was constitutional, since the power conferred on the commissioner to commit to jail for refusing to testify is not judicial in the sense of the Constitution conferring all judicial power upon the courts of the state. *Benckenstein* v. *Schott* (Ohio 1916), 110 N. E. 633.

It is interesting to note that the instant decision is in conflict with the law in New York, so a commissioner appointed in Ohio to take testimony in New York cannot punish for contempt, while if appointed in New York to act in Ohio he may do so. *People ex rel. Macdonald* v. *Leubischer,* 54